

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Reallocation of Television Channels
60-69, the 746-806 MHz Band

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ET Docket No. 97-157

TO: The Commission

REPLY OF COMPU-DAWN

Compu-DAWN, Inc. ("Compu-DAWN") submits this brief reply to respond to the reply comments filed by the National Public Safety Telecommunications Council ("NPSTC") and the Association of Public-Safety Communications Officials-International, Inc. ("APCO") in the above-captioned proceeding. Seeking to exclude Compu-DAWN as a candidate for public safety spectrum, both NPSTC and APCO argue for a much more restrictive definition of "public safety services" than that provided by Congress in its recent amendments to the Communications Act of 1934 ("Communications Act").^{1/} But there is no support for their position in the language of the statute or in its legislative history. The Commission should be guided by Congress' express language that includes entities such as Compu-DAWN as candidates for spectrum in the 746-806 MHz band and tailor its regulations accordingly.

Compu-DAWN plays a critical role in ensuring that public safety agencies are able to protect life and property in the most safe and efficient manner. Since 1983, Compu-DAWN's exclusive mission has been to provide public safety software

^{1/} See *Balanced Budget Act of 1997*, P.L. No. 105-33, (amending Title III of the Communications Act by adding section 337, entitled "Allocation and Assignment of New Public Safety Services Licenses and Commercial Licenses") (hereinafter the "Budget Act").

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applications to law enforcement, fire departments and emergency management systems. By permitting voiceless dispatch, instantaneous roadside access to local, state and national criminal databases, pre-plans for emergency or disaster situations, and photo transmissions in the field, Compu-DAWN's products greatly enhance the workings of emergency public safety dispatch and communications systems. These mobile systems, now at work in more than 60 public safety agencies, have the additional advantage of being able to operate on virtually any frequency under 1 GHz and to inter-operate across frequencies and agencies using different hardware systems.

In amending Title III of the Communications Act, Congress instructs the Commission to allocate 24 MHz of spectrum for "public safety services."^{2/} Congress defines "public safety services" as "services --

(A) the sole or principal purpose of which is to protect the safety of life, health, or property;

(B) that are provided --

(i) by State or local government entities; or

(ii) by *nongovernmental organizations* that are *authorized by a governmental entity whose primary mission is the provision of such services*; and

^{2/} "Not later than January 1, 1998, the Commission shall allocate the electromagnetic spectrum between 746 megahertz and 806 megahertz, inclusive, as follows:

(1) 24 megahertz of that spectrum for public safety services according to the terms and conditions established by the Commission, in consultation with the Secretary of Commerce and the Attorney General.

(2) 36 megahertz of that spectrum for commercial use to be assigned by competitive bidding pursuant to section 309(j)."

See Section 337(a) of the Communications Act, amended by Section 3004 of the Budget Act.

(C) that are not made commercially available to the public by the provider."^{3/}

Compu-DAWN fits squarely within Congress' definition of a provider of public safety services: Compu-DAWN's principal mission is to develop seamless, end-to-end public safety support software that will service the nation's police, fire and other emergency service agencies in protecting the safety of life, health and property; Compu-DAWN is authorized by public safety agencies to provide public safety support services; and Compu-DAWN does not make its products commercially available to the public.

The Commission should reject NPSTC and APCO's unsupported claims that the statute *meant to* restrict eligibility for spectrum to a smaller group. NPSTC and APCO first contend that it "appears" Congress meant to exclude for-profit entities.^{4/} But this position is neither supported in the language of the statute nor in its legislative history. Certainly Congress would have expressly restricted its definition of public safety services if it intended to limit public safety spectrum to nongovernmental non-profit entities.^{5/}

The Commission similarly should reject NPSTC and APCO's contention that an agreement with a public safety agency to assist in public safety operations was not meant to constitute an authorization by the agency as outlined in the statute. Neither

^{3/} See *id.*, Section 337(f) (emphasis added).

^{4/} NPSTC Reply at 6; APCO Reply at 6.

^{5/} Indeed, Congress restricted the reach of other provisions in the Budget Act. See e.g., Section 3002(a)(2) (listing exemptions from competitive bidding authority for public safety radio services and defining such services as including certain private and not-for-profit organizations).

NPSTC nor APCO cite support for their novel definition of "authorized" and neither explain what else Congress possibly could have meant by the phrase "authorized by a governmental entity . . ." if contracts or agreements with such entities are not included.^{6/} Absent clear direction to the contrary from Congress, the Commission should interpret the term "authorized" in accordance with its ordinary and standard meaning and harmonize the public safety allocation accordingly.

In addition to the clear language of the statute that requires the Commission to receive applications from and consider granting licenses to nongovernmental organizations such as Compu-DAWN, the Commission should embrace such an approach to assure that public safety agencies catchup to and keep pace with the constantly changing innovations pervading telecommunications. The Commission recently recognized that interoperability problems "must be solved quickly if the public safety community is to meet the changing demand of the 21st century."^{7/} By allowing certain nongovernmental entities endeavoring to serve public safety agencies to apply for public safety spectrum, the Commission would encourage commercial entities to develop

^{6/} Any standard dictionary definition of "authorized" includes the types of agreements that Compu-DAWN enters into with public safety agencies whereby Compu-DAWN is commissioned to provide services to the agency. *See Webster's New World Dictionary of the American Language*, Second Edition (1992) (defining "authorize" as "1. to give official approval to or permission for, 2. to give power or authority to; empower; commission, 3. to give justification for; warrant.")

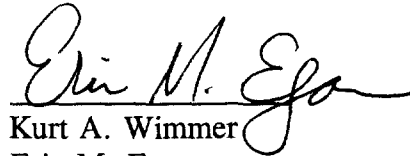
^{7/} *See In the Matter of the Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010*, Second Notice of Proposed Rulemaking (rel. October 24, 1997) ("Second Notice") at ¶ 3.

affordable technologies tailored to public safety usage.^{8/} These technologies have the potential to satisfy the public safety community's urgent and expanding interoperability requirements by providing a communications link between public safety officials in different jurisdictions, different levels of jurisdiction and different agencies. This nationwide link is essential to enable the public safety community to fulfill its mission of protecting the public in this century and beyond.^{9/}

For all of the above reasons, the Commission should include Compu-DAWN as a candidate for the public safety spectrum.

Respectfully submitted,

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^{8/} The Commission currently assigns free spectrum to commercial entities, including private organizations that provide ambulatory services. Compu-DAWN -- whose services more directly support the police, fire and other emergency response agencies -- similarly should receive spectrum to provide its public safety services.

^{9/} See Second Notice, at ¶¶ 12-14 (emphasizing "critical need" for nationwide communications interoperability among Federal, State and local public safety agencies).